

CAFO PUBLIC MEETING—DALLAS, TEXAS
MARCH 20, 2001, 1:00 to 5:00 PM

On December 15, 2000, former U.S. Environmental Protection Agency (EPA) Administrator Carol Browner signed proposed revisions to the National Pollutant Discharge Elimination System (NPDES) Permit Regulations and the Effluent Limitation Guidelines and Standards (ELG) for Concentrated Animal Feeding Operations (CAFOs). The proposed revisions revise and update the two regulations that address impacts on water quality from manure and process waters generated by CAFOs. EPA published these proposed revisions in the *Federal Register* on January 12, 2001, at 66 FR 2959.

EPA held eight public information meetings in different cities across the country. The purpose of these meetings was to enhance public understanding of the proposed changes to regulations for CAFOs. At each meeting, EPA presented an overview of the proposed regulations and responded to questions and requests for clarification from attendees.

These informational meetings were not part of the public comment process. Any comments that citizens or groups wish EPA to consider as part of the rulemaking process must be submitted in accordance with the requirements specified in preamble to the proposed rule. The public comment period extends until July 30, 2001. In Dallas, Sheila Frace and Ron Jordan from the Office of Science and Technology and Ginny Kibler from the Office of Wastewater Management, presented the overview of the proposed CAFO rule revisions.

The summary below is an overview of statements made by the public participants at the informational meeting. These notes are not intended to be a verbatim transcript or a comprehensive record of the meeting; rather, they are intended to identify the participants at this meeting, the issues of concern, and the general nature of the questions asked and the answers provided. The summary is organized by order of questioner.

MEETING SUMMARY

Presenters: Sheila Frace, Director, Engineering Analysis Division, Office of Science and Technology, Office of Water, USEPA; Ginny Kibler, Office of Wastewater Management, Office of Water, USEPA; Ron Jordan, Office of Science and Technology, Office of Water, USEPA

Moderator: Jack Ferguson, Chief of NPDES Permits Branch

Panelists: Sheila Frace, Ginny Kibler, Ron Jordan

Approximate number of public participants: 80

Attendees: Meeting attendees were predominantly beef producers and beef industry trade representatives. Also in attendance were Farm Bureau and state agency personnel.

Meeting Opened: 1:04 PM

Questioning Began: 2:15 PM

Meeting Adjourned: 4:52 PM

SUMMARY OF QUESTIONS AND ANSWERS
(By order of questioner)

The following are notes of this proceeding. EPA does not have a verbatim transcript of the proceeding.

1. Marla Peek, Oklahoma Farm Bureau

Q: Why is EPA proposing changes in the regulations? Even though the federal CAFO regulations have not changed much over the past 25 years, state regulations have changed and are much more stringent. Oklahoma has adopted the CALM assessment methodology and is doing a good job controlling impacts from livestock, which is unfairly blamed for pollution problems. We've worked hard on 305(b) and 303(d)—why not let the states continue with their voluntary and other measures?

A: The 305(b) reports note that agriculture is not the cause of all impairments, but that some significant nutrient impairment is associated with agricultural activities. Despite progress made over the past 20 years, there are still problems that require a national response. This rule attempts to improve the national program while retaining flexibility for states to tailor their programs.

Q: The proposed rule and this meeting resemble the process for advanced notice of proposed rulemaking. Does EPA intend to republish the rule? The Oklahoma Farm Bureau supports republication and public hearings.

A: At this time, EPA does not plan to repropose. EPA may publish a Notice of Data Availability (NDA) if data are sent to the Agency during the comment period.

Q: Is the 100-foot setback requirement grounded in sound science, and does it agree with the U.S. Department of Agriculture Natural Resource Conservation Service (USDA NRCS) comprehensive nutrient management plan (CNMP) criteria?

A: Minimum setbacks are targeted at keeping pollutants in manure out of surface waters. EPA reviewed 30 to 40 studies on setbacks, and found that setbacks are effective in doing this. There are a lot of site-specific conditions that should be considered in establishing setback distances, and EPA is looking at these issues. The 100-foot setback, though, has been found to be among the most effective in most cases.

Q: Why is EPA having this meeting in Dallas? There are other places that are closer for producers, and more appropriate—like Oklahoma City

A: [No answer.]

2. Ross Wilson, Texas Cattle Feeders Association

Q: The Texas Cattle Feeders Association (TCFA) supports republication of the regulation. We disagree with some of the cost information cited in the rule and request that the comment period be extended at least 120 days. Can the Consent Decree deadline for the final rule be extended past December 15, 2002?

A: The plaintiffs in the case—Natural Resource Defense Council—and the judge have a lot of input on that, and the judge has indicated that he is not inclined to grant any more extensions. Our current schedule was developed by backtracking from the deadline and assessing what EPA needs to do to comply with the Administrative Procedures Act, which has certain requirements and time lines EPA must

follow. Would the TCFA choose extending the deadline or republication of the rule if it had to make such a choice?

Q: On the question of general permits, why did EPA set these arbitrary size limits for general versus individual permits?

A: EPA wanted to set regionally appropriate size limits; “big” is defined differently in different parts of the country. However, EPA is leaving it up to the states to determine criteria for individual permits.

Q: EPA is retaining the right to designate certain facilities as requiring individual permits. Why not let states address the issue of who needs an individual permit?

A: EPA is allowing states to set criteria for individual permits; however, in some cases EPA may designate an operation if the state does not.

Q: Looking at water quality impacts could help define who needs an individual permit. You could allow the total maximum daily load (TMDL) process to call for who needs an individual permit rather than an arbitrary size limit.

A: That is a good point, but EPA still wants to achieve some consistency nationwide.

3. Ken Horton, Texas Pork Producers Association

Q: Why is EPA eliminating the 25-year, 24-hour storm exemption?

A: The changing shape of the industry, the size of current operations, and impacts from large storms prompted EPA to review this issue and develop the proposed regulation.

Q: Manure lagoons in the Southwest are designed for evaporation. Requiring lagoon covers defeats that purpose, and is a disincentive for evaporative lagoons. There a lot of other good manure treatment technologies that this rule will impact negatively.

A: EPA looked at a lot of technologies including end-of-pipe criteria, filter strips, and wetlands. Most treatment systems are either too expensive or too ineffective to provide a viable option. Wetlands require large land areas, can contaminate groundwater, and are designed to have a discharge—sometimes to surface waters. Treatment systems that have discharges involve effluent quality requirements, like municipal wastewater treatment plants. This approach is very expensive.

Q: What are the criteria for the “certified” specialists who can develop permit nutrient plans (PNPs)?

A: EPA has not yet fully defined this. The agency is working with USDA on what the qualifications would be.

4. Tom McDonald, Conti Beef

Q: The imposition of permit requirements on farmers who accept manure for application to their fields will drive these farmers to use commercial fertilizer rather than waste from feedlots.

A: The options EPA is looking at are (1) a provision for the CAFO to provide information to the recipient and a certification by the recipient that it will be used appropriately, and (2) no requirement. EPA does not intend to provide a disincentive to the use of manure, which the agency considers a valuable resource that should be used.

Q: Region 6 already requires recordkeeping and information on the destination and analysis of manure . What if manure is applied to lands under control of the CAFO operator, in compliance with an approved PNP, and a storm causes runoff into surface waters? Would this be covered by an exemption?

A: If the manure was applied according to the PNP it would be covered.

Q: Why is EPA seeking to regulate third-party users of manure but not users of commercial fertilizers?

A: EPA has two options out for comment, one of which requires nothing from third-party users. EPA is not intending to regulate third-party users through the proposed regulation. If a third-party user takes manure and causes a water quality problem, any EPA action would be taken up with the third party user under other Clean Water Act (CWA) provisions. The CAFO operator is not responsible for manure once it is out of his or her control.

5. Rob Hosford, Texas and Southwest Cattle Raisers

Q: If a portion of a large pasture lacks vegetative cover during the growing season because of livestock traffic to access water, mineral blocks, etc., does that make it a CAFO?

A: EPA does not intend to designate parts of denuded pastures a CAFO. One key issue here is confinement: If animals are confined to a specific area that is denuded and the other CAFO criteria are met, it would be a CAFO.

Q: Would areas designated for weaning calves or cattle auction yards be CAFOs?

A: If they meet the size thresholds, confine animals for 45 days or more, or meet the other definitions they would be a CAFO. These facilities produce manure much like any other confined animal facility. Again, EPA does not intend to require permits for denuded portions of pastures, just areas where threshold-level numbers of animals are confined for 45 or more days.

6. Don Dendy, Accord Agriculture, Inc.

Q: How does EPA or state regulators know when swine manure lagoons are leaking? Clay liners can leak; is there some way to detect such leakage before it shows up in groundwater?

A: Leak detection systems, impermeable liners, and monitoring wells are the best approaches EPA has right now.

7. Sharon Lombardi, Dairy Producers of New Mexico

Q: What does EPA propose to do with facilities that cannot meet permit requirements?

A: Noncompliance with permit requirements has traditionally been handled through enforcement actions. Facilities that are not able to meet the requirements may have to close. EPA has looked at such economic factors in development of the rule.

Q: The questionable need for a hydrologic connection analysis needs to be addressed in arid states. It is an unnecessary cost.

A: Good point. Region 6 has some requirements for hydrologic analyses that are very similar to what might be required in the proposal.

8. Jay Lazarus, Texas Association of Dairymen

Q: Is this proposal based on sound science, or does it just respond to the terms of the lawsuit?

A: The consent decree does not provide any input on how the rule was to be developed and what type of approach EPA should use. It just set the schedule for EPA in developing the proposed rule.

Q: The proposed rule is a potpourri of options, not a cohesive regulatory package with clear directives. Some provisions may duplicate state regulations. For example, New Mexico has a state program for discharges to groundwater. Will EPA recognize programs that have such functional equivalency?

A: The proposed rule does not address discharges to groundwater, and it is likely that the hydrologic connection issue would be addressed by programs like New Mexico's.

Q: Will EPA recognize state programs?

A: Where state programs are consistent with EPA requirements and such consistencies are documented, EPA would recognize them as complying.

Q: Are EPA Region 6 and the other regions staffed to take on the work involved with implementing this rule?

A: Resources are always an issue. Region 6 and the other regions will try to cover implementation as best they can with the resources available.

Q: Can you explain the difference between "significant" and "direct" hydrologic connection between groundwater and surface waters?

A: The preamble describes some of the criteria and other aspects that a hydrologist would look at in such an analysis, including geology, soils, depth to groundwater, and under what type of condition. This is very much a site-specific assessment.

Q: Does the hydrologic connection issue relate only to the confinement area, or to any lands where manure might be applied?

A: Only to the confinement area, not the manure application areas.

Q: Does the agricultural storm water exemption apply to the application of "greenwater?"

A: Yes, as long as there are no dry weather discharges into surface waters.

Q: Is EPA requiring an impermeable pad for temporary storage of manure that has been flushed or moved from buildings or confinement areas? It is hard to get in there and move the manure out to a pad during parts of the year.

A: EPA is not intending to require pads under pens or confinement areas, just in areas where manure is stored or stockpiled long-term.

Q: Why is EPA holding informational meetings rather than public hearings on this proposal?

A: The proposal is complex, and there is some misunderstanding over how it differs from the existing regulations. EPA wanted to make sure comments on the proposed rule were based on correct information. This process is not intended to inhibit comments, and it does not preclude public hearings at a later date.

9. Tom Conry, City of Waco

Q: Will EPA issue guidance on how smaller operations might be designated as a CAFO, particularly in watersheds with 303(d) listed streams?

A: EPA is looking at such criteria, which might include watersheds with listed streams and so on. Some of these criteria are already on the books and relate to operations which cause water quality impacts. The option of designating operations with more than 500 animal units (AU) as CAFOs would be another approach for designating smaller operations.

Q: So if documented impacts are present, a facility could be designated as a CAFO?

A: Yes, if the source is determined to be an AFO. Best professional judgement may be involved in such a designation, or other criteria determined by the permitting authority. However, some states might not elect to designate a source as a CAFO so it can use 319 funding to deal with the problems.

10. Joe Lally, Farmland Industries

Q: The “potential to pollute” provision is confusing; who would it cover?

A: It would cover poultry operations that are totally enclosed, with no land application of manure, for example. Such a facility might be able to demonstrate that there is no potential to pollute, but would still have to report on manure generated, where it went, etc. A facility would have to petition the permitting authority for this exemption if it was over the size thresholds.

11. Justin Carpenter, Mid-Oklahoma Coop

Q: Does EPA plan to regulate commercial fertilizer use?

A: If commercial fertilizer is used at a CAFO, it would need to be included in the PNP. All nutrient sources are to be included in these nutrient plans, not just manure.

12. Vernon Rowe, Pilgrims Pride

Q: The co-permitting proposal does not recognize the efforts of integrators and other livestock “control” operations that have adopted strict nutrient and other requirements for its producers. It seems only to encourage lawsuits.

A: The option contained in the proposed rule offers states an opportunity to develop their own excess manure programs. Excess manure is the problem EPA is targeting, especially those areas that produce more manure than can be used at agronomic rates on crop or other lands. States can deal with this through environmental management systems (EMS) or other ways. EPA is looking for comments on how to deal with excess manure issues, maybe something like “if the potential co-permittee does X, Y, and Z no co-permitting required will be.”

Q: Did EPA consider that a certain number of operations would have to go out of business if the rule is adopted?

A: EPA reviewed existing data and conducted analyses to determine economic impacts and tried to project impacts.

Q: Why has EPA adopted this “big is bad” approach in terms of regulation of AFOs?

A: EPA is not saying that small farms are not a problem at all. However, EPA has found in general that large farms often lack available land for manure application, a problem not often associated with smaller operations. With this proposal, EPA is trying to achieve the most benefit with the least amount of regulatory control. Approaching this by considering operational size is not new, and was mentioned in the joint *USDA–EPA Unified National Strategy for Animal Feeding Operations (AFO)*.

13. Chester Wyant, ECS, Inc.

Q: Will EPA allow state-by-state and region-by-region flexibility in implementing the proposed rule?

A: EPA is leaving a number of issues up to the states: individual versus general permits for certain operations; application of manure on frozen or saturated ground; and assessment of direct hydrologic connections between ground and surface water. EPA expects variability among the states and regions in these and other areas.

Q: Will composted manure be treated differently from “green” manure?

A: EPA recognizes that composting is good for pathogen control, stabilization of nutrients, and cost efficiencies. But it is not treated differently under the proposal. EPA does not now have enough information to justify treating composted manure differently.

Q: Will EPA issue guidelines on how CAFOs are to be designated at the lower threshold numbers?

A: Some guidance is available now under the existing rule. Further guidelines will likely emerge from states and through the PNP and other processes.

Q: Will EPA be developing a readable, understandable summary of the final rule, a sort of “Readers Digest” version?

A: EPA has a fact sheet available now that provides a good summary of the proposed rule. When a final regulation is adopted there will be other summaries and fact sheets available to describe the issues involved.

Q: Will there be public hearings on the final rule?

A: EPA has not planned any as of this time.